

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 8, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP2308

Cir. Ct. No. 2005SC906

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JOHN SNOWBANK,

PLAINTIFF-RESPONDENT,

V.

TIM BRADWELL, D/B/A BRADWELL ENTERPRISES,

DEFENDANT-COUNTER CLAIMANT-APPELLANT.

APPEAL from a judgment of the circuit court for Polk County:
CONRAD A. RICHARDS, Judge. *Affirmed.*

¶1 BRUNNER, J.¹ Tim Bradwell appeals a judgment awarding damages to John Snowbank. Bradwell argues the Wisconsin Consumer Credit Act

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

did not apply to the transaction with Snowbank. He also argues that if the Act did apply he did not violate it, and therefore Snowbank was not entitled to damages. We disagree and affirm.²

BACKGROUND

¶2 On April 30, 2004, Snowbank met with Bradwell to purchase a trailer. The parties filled out a receipt indicating Snowbank “paid on account” \$520 and had a balance due of \$89.97, which was due by May 7. Both parties signed the receipt. Snowbank took possession of the trailer at that time. Bradwell did not transfer title to Snowbank at the time of the sale. Snowbank did not pay the balance due. Bradwell learned the trailer was parked on Willis and Alice Burton’s property. Bradwell then took the trailer from the Burtons’ property without notice or Snowbank’s consent and subsequently sold it to another party.

¶3 On November 15, 2005, Snowbank sued Bradwell in small claims court for violation of the Act and sought return of the trailer, damages, and attorney fees. Bradwell filed an answer and counterclaim. Both parties moved for summary judgment.

¶4 On February 13, 2007, the trial court granted partial summary judgment to Snowbank. The court noted that the bill of sale was “uncontroverted in terms of its authenticity” and was “clear and unambiguous with regard to the subject property, the total price, the amount of the down payment and the balance

² Bradwell also purports to appeal from the court’s non-final order granting partial summary judgment. While the appeal of the judgment allows us to review prior non-final adverse rulings, only a final judgment or order is appealable. *See* WIS. STAT. § 808.03(1); WIS. STAT. RULE 809.10(4). A partial summary judgment is not a final order because it does not dispose of all of “the entire matter in litigation as to one or more of the parties.” *See* WIS. STAT. § 808.03(1).

owed as well as when the balance was due.” The court concluded, Snowbank “is correct in asserting that through their actions the parties created a relationship which is subject to the provisions of the [Act] as a consumer credit transaction[]” and granted summary judgment on that issue. The court denied summary judgment on the rest of the matter stating,

There are genuine issues with regard to other material facts including but not limited to whether the defendant was entitled to take possession of the car trailer based on Mrs. Burton’s consent. Also, there will need to be a trial with regard to the basis on which the trailer was at the Burton residence (whether it was stored there or whether it had been effectively pawned with the Burtons).

In addition there will undoubtedly be a genuine issue as to the reasonableness and necessity of the attorney’s fees.

¶5 At trial on June 26, Bradwell admitted that Snowbank did not surrender the trailer to him, and he did not send Snowbank notice that he had taken possession of the trailer pursuant to WIS. STAT. § 425.207. Bradwell testified the trailer was on Willis Burton’s property, and Willis gave him permission to take the trailer. Willis’s widow Alice Burton testified that Snowbank left the trailer with Willis as collateral for money that Willis had loaned Snowbank. She also testified that Snowbank never told them that they could give the trailer away and he never told them that they owned the trailer. The court awarded judgment to Snowbank in the amount of \$520 for the amount he paid on the trailer and \$3,412 in attorney fees.

DISCUSSION

¶6 Bradwell first argues that the trial court erred by granting summary judgment on the issue of whether the agreement constituted a consumer credit transaction. Whether summary judgment is appropriate is a question of law

reviewed without deference to the trial court. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2); *Green Spring Farms*, 136 Wis. 2d at 315. We view the facts in the light most favorable to the party opposing the motion. *State Bank of La Crosse v. Elsen*, 128 Wis. 2d 508, 511-12, 383 N.W.2d 916 (Ct. App. 1986). We decide the issues using the same methodology as the trial court and consider all the grounds for summary judgment that were raised at the trial court. See *Green Spring Farms*, 136 Wis. 2d at 315.

¶7 Whether the agreement between Bradwell and Snowbank is a consumer credit transaction subject to the Consumer Credit Act is a mixed question of fact and law. *LeBakken Rent-to-Own v. Warnell*, 223 Wis. 2d 582, 589, 589 N.W.2d 425 (1998). “On appeal, we will not upset the trial court’s findings of fact unless they are clearly erroneous, but whether the facts meet the elements of a consumer credit transaction is a question of law.” *Id.*

¶8 At the summary judgment hearing, Bradwell argued the transaction was not a consumer credit transaction. Bradwell contended he was “not a lender” and “there was never any intent to lend money or property of any sort to John Snowbank, and title ownership of the Trailer was never transferred by Bradwell Enterprises to John Snowbank.”

¶9 Under WIS. STAT. § 421.301(10), any “consumer credit sale” is also a consumer credit transaction” and therefore subject to the regulations of the Consumer Credit Act. *LeBakken*, 223 Wis. 2d at 591. A consumer credit sale includes a bailment. WIS. STAT. § 421.301(9).

[A] bailment constitutes a consumer credit sale if the bailee ... pays or agrees to pay an amount substantially equivalent to or in excess of the ... value of the goods, and the bailee ... for no other or a nominal consideration has the option to become ... the owner of the goods upon full compliance with the agreement.

Palacios v. ABC TV & Stereo Rental, 123 Wis. 2d 79, 84, 365 N.W.2d 882 (Ct. App. 1985) (citation omitted). In the context of a bailment, § 421.301(9) “does not require that [a] customer be contractually obligated to make installment payments.” *Id.* at 88.

¶10 The facts of this case clearly fit within the bailment requirements of the Act. It is undisputed that Snowbank had possession of the property. In addition, the receipt filled out by the parties indicates Snowbank paid \$520 and had a balance due of \$89.97. Neither party disputes that Snowbank would have become the owner of the trailer if he had paid the remainder of the balance. Therefore, under the undisputed facts presented to the trial court, the agreement was subject to the Act.

¶11 On appeal, Bradwell argues that the Act does not apply because Snowbank was not a customer. He failed to raise this issue at the summary judgment hearing. Trial courts “need not divine issues on a party’s behalf[]” and “we will not ... blindside trial courts with reversals based on theories which did not originate in their forum.” *Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶11,

261 Wis. 2d 769, 661 N.W.2d 476 (citation omitted). We therefore decline to address this argument.³

¶12 Bradwell next argues that even if there was a bailment, the trailer was voluntarily surrendered by Snowbank to the Burtons who then voluntarily surrendered the trailer to Bradwell and there was therefore no violation of the Act. WISCONSIN STAT. § 421.206(1) prohibits a merchant from taking possession of goods “by means other than legal process.” However, there is an exception when the customer has surrendered the goods. WIS. STAT. § 421.206(1)(a).

¶13 At trial, Alice Burton testified that Snowbank left the trailer with her husband as collateral for money that he had loaned Snowbank. She also testified that Snowbank never told them that they could give the trailer away and he never told them that they owned the trailer. Under these facts, we cannot conclude that Snowbank surrendered ownership of the trailer to the Burtons. The Burtons therefore did not have the authority to relinquish the trailer to Bradwell. There was no voluntary surrender. Bradwell’s action violated the Act and Snowbank is entitled to damages and attorney fees. *See* WIS. STAT. §§ 425.301(1), 425.308.⁴

³ Bradwell makes numerous other arguments regarding why the Act does not apply. Many of these arguments were not brought before the trial court and will thus not be addressed on appeal. *Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶11, 261 Wis. 2d 769, 661 N.W.2d 476. The remainder of Bradwell’s arguments are not adequately developed on appeal. For example, Bradwell claims that Snowbank violated the good faith provision of the Act but provides no case law to support this argument or to explain what, if any, implications such a violation would have on his case. Additionally, Bradwell claims that if there was a bailment, the bailment was gratuitous. This argument is similarly underdeveloped. We will not develop Bradwell’s amorphous and unsupported arguments for him. *See Barakat v. DHSS*, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995).

⁴ Bradwell makes a passing argument that the trailer was damaged by Snowbank, and he is therefore entitled to damages. Bradwell also briefly mentions that the amount of damages awarded to Snowbank was incorrect. These arguments are not sufficiently developed and we will not develop them for him. *See Barakat*, 191 Wis. 2d at 786.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

